



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,638	08/22/2001	John J. Gregson	BLD920010006US1(14385)	8740
7590	03/07/2006		EXAMINER	
Richard L. Catania.,Esq. Scully,Scott, Murphy & Presser 400 Garden City Plaza Garden City, NY 11530				LIN, KELVIN Y
			ART UNIT	PAPER NUMBER
			2142	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/934,638	GREGSON, JOHN J.
	<b>Examiner</b>	<b>Art Unit</b>
	Kelvin Lin	2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 31 October 2005.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-17 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## Detailed Action

### Responds to Arguments

1. Applicant's arguments regarding to rejections under 35 USC 101 are not persuasive.
2. Claims 1-17 rejected under 35 U.S.C. 101 because the language of each claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.
3. Claims 1-17 are claiming forming a first and a second weighted asymptotic function, forming a product of said first weighted asymptotic function, and forming the sum of said product for all said interconnected server, all it mentions merely the mathematical equation and lacks of the software performs in the server platform. Forming a sum or product is not a tangible result. One needs to transmit, display, store or use the result to be tangible. Therefore, it does not limit to the tangible embodiments.

In view of Applicant's disclosure, specification page 8, line 20-22 the mathematical equations are not tangible embodiments. As such, the claim is not limited to statutory subject matter and is non-statutory. Therefore, it is impossible for the specification to teach how to use the invention. One skilled in the art clearly would not know how to use the claimed invention.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

Claims rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected to make and/or use the invention.

5. Claim 1-17, for claiming equations of measuring the size of a distributed system of interconnected servers are not enabling to make or use by either a "specific, substantial and credible" asserted utility or a well established utility for deriving a claimed method.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-17 are rejected under 35 USC 103(a) as being unpatentable over Odhner et al., (US Pat. No. 6898564).

2. Regarding Claim 1, Odhner teaches a method of measuring the size of a distributed system of interconnected servers, said method comprising the steps of:

- for each said server, forming a first weighted asymptotic function of the count of CPUs installed in said each said server, and a CPU factor based on said server architecture and operating system (Odhner, col.5, l.50-67);
- for each said server, forming a second weighted asymptotic function of the amount of random access memory installed on said each said server, and a normalizing factor representing a reference date, and a RAM factor based on said server architecture and operating system (Odhner, col. 6, l.55-67) ;

Odhner does not specifically disclose of forming a product of said first weighted asymptotic function for said each said server and forming the sum of said product for all said interconnected servers.

However, In the plurality system, to form the sum of product for interconnected server is obvious, because of the accumulativeness for all servers.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the sum with respect to the plurality of server.

The motivation would be for determination and forming the sum of

function and the product of function is the accumulativeness for all interconnect servers.

3. Regarding claim 2, Odhner further discloses the method of claim 1, further comprising the step of allocating support manpower based on said sum (It is based on the inherence of the function to measure the CPU and memory).
4. Regarding claim 3, Odhner further discloses the method of claim 1, wherein the first weighted asymptotic function is represented as f.sub.cpu and is of the form:  $F.\text{sub.CPU}=A(x)+e.\text{sub.x}$ . (Odhner, col. 5, l.50-67).
5. Regarding claim 4, Odhner further discloses the method of claim 1, wherein the second weighted asymptotic function is represented as f.sub.RAM and is of the form:  $F.\text{sub.RAM}=A(x)+e.\text{sub.x}$ . (Odhner, col. 6, l.55-67)
6. Regarding claim 5, Odhner further discloses the method of claim 1, wherein the reference date represents a base reference year RAM (Odhner, col. 2, l.40-41, to find the maximum service rate it may using year as the reference time interval).
7. Regarding claims 6-10 that describes the limitation of a system for measuring the size of a distributed system of interconnected servers, have similar limitations as claims 1-5. Therefore, claims 6-10 are rejected for the same reasons set forth in the rejection of claims 1-5.
8. Regarding claims 11-17 that describes the limitation of a program storage device for measuring the size of a distributed system of interconnected servers measuring, have similar limitations as claims 1-5. Therefore, claims 11-17 are rejected for the same reasons set forth in the rejection of claims 1-5.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelvin Lin whose telephone number is 571-272-3898. The examiner can normally be reached on Flexible 4/9/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

03/03/06  
KYL



JASON CARDONE  
SUPERVISORY PATENT EXAMINER